



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-0252]

RIN 1625-AA09

Drawbridge Operation Regulation; Wolf River, Gills Landing
and Winneconne, WI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the operating schedule that governs the Winneconne Highway Bridge at Mile 2.4, and the Canadian National Railroad Bridge at mile 27.8, both over the Wolf River. A review of the current regulation was requested by the Wisconsin Department of Transportation (WDOT) and the Canadian National Railroad.

DATES: This rule is effective on [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0252. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the

"SEARCH" box and click "SEARCH." Click on Open Docket

Folder on the line associated with this rulemaking. You may

also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Lee Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone (216) 902-6085, e-mail Lee.D.Soule@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

A. Regulatory History and Information

On May 10, 2013, we published a notice of proposed rulemaking (NPRM) entitled, "Drawbridge Operation Regulation; Wolf River, Gills Landing and Winneconne, WI" in the Federal Register (78 FR 27336). We did not receive any

comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

The Wolf River extends from its head of navigation in New London, WI and travels south to Winneconne, WI where it confluences with the Upper Fox River. The Wolf River has two drawbridges over the waterway. The Winneconne Highway Bridge at mile 2.4 is a bascule bridge that provides 70 feet horizontal clearance, 7 feet vertical clearance in the closed position, and an unlimited vertical clearance in the open position. The Canadian National Railroad Bridge at Mile 27.8 is a former swing bridge that was converted to a vertical lift bridge in 2012 that provides 56 feet horizontal clearance, 7 feet vertical clearance in the closed position, and a vertical clearance of 16 feet in the raised position. Marine traffic on the waterway consists of small commercial vessels, and both power and sail recreational vessels. The existing drawbridge regulation for Wolf River, 33 CFR 117.1107, includes only the Winneconne Highway Drawbridge and requires the bridge to open on signal; except from 11 p.m. to 7 a.m., between May 1 and October 31, the bridge will open if at least two hours advance notice is provided, and from November 1 through April 30, the bridge will open if at least 12-hours advance notice is provided. The Coast Guard has been advised of

updated navigation needs on Wolf River, including reports there has been an increase in recreational vessel usage of the waterway due to improvements to the lock system, dredging projects, and restored drawbridges over the Fox River that connect directly with the Wolf River. This rule will establish consistent operating schedules that will meet the needs of current and future navigation on the Wolf River and provide consistency in regulations for the rest of the connecting waterways.

C. Discussion of Comments, Changes and the Final Rule

The existing regulation for Wolf River (33 CFR 117.1107) addresses only one of the two drawbridges over Wolf River, and has not been revised since the overall recodification of federal drawbridge regulations in 1984.

This rule was developed in conjunction with locally applied bridge schedules implemented by WDOT and Fox River Valley Navigation Authority for the past 10 to 15 years. These agencies, along with Canadian National Railroad, have reviewed and approved this rule.

The current regulation does not include the Canadian National Railroad Bridge. The Canadian National Railroad Bridge is in a remote location and the only access to the bridge by the drawtender is by boat. Bridge logs were not available for review. The Coast Guard has coordinated with local stakeholders and the Fox River Valley Navigation

Authority and determined a 6-hour advance notice for the Canadian National Railroad Bridge from April 20 to October 15 would meet the needs of current navigation. A 12-hour advance notice from October 16 to April 19 would be required for openings.

Currently, the Winneconne Bridge opens on signal between the hours of 7 a.m. and 11 p.m., daily, and requires a 2-hour advance notice of arrival for openings from May 1 to October 31 between the hours of 11 p.m. to 7 a.m., daily. From November 1 to April 30 mariners are required to provide a 12-hour advance notice for openings. WDOT has operated the Winneconne Highway Bridge during the navigation season in recent years from April 20 to October 7, with 2-hours advance notice between midnight and 8 a.m. Slight adjustments to this schedule were made in the development of this rule. Bridge openings will occur on signal from April 20 through October 15, except from midnight to 8 a.m. when 2-hours advance notice is required for openings, and from October 16 through April 19 if a 12-hour advance notice is received. No comments were received to the NPRM and this final rule adopts the proposed rule without changes.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or

executive orders.

1. Regulatory Planning and Review

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule incorporates the locally applied bridge schedules that have been employed in recent years, with only small variations. The schedule was reviewed and approved by the bridge owners and representatives of local boating organizations. This rule is expected to improve access to the waterway and establish operating regulations that meet the needs of the boating public in an easy to read language.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with

populations of less than 50,000. The Coast Guard did not receive any comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit the Winneconne Bridge from midnight to 8 a.m. will need to provide a 2-hour advance notice of arrival for bridge openings, and at all hours a 6-hour advance notice for openings at the Canadian National Railroad Bridge. These operating hours would affect both drawbridges throughout the boating season from April 20 to October 15. Impacts to small entities are not expected to be significant as these schedules have effectively been in place for numerous years and are accepted by local vessel operators. During the winter when the waterway is typically ice covered, mariners will be required to provide a 12-hour advance notice for openings for both bridges, as applicable.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning

its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications

for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule revises existing operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

E. List of Subjects in 33 CFR Part 117 Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to

read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.1107 to read as follows:

§117.1107 Wolf River.

(a) The draw of the Winneconne Highway bridge, mile 2.4 at Winneconne, shall open on signal; except that, between the hours of midnight and 8 a.m., from April 20 through October 15, at least 2-hours of advance notice is required, and from October 16 through April 19, at least 12-hours of advance notice is required. Advance notice shall be provided to the Winnebago County Highway Department.

(b) The draw of the Canadian National Railroad Bridge, mile 27.8 at Gill's Landing, shall open on signal if at least 6-hours advance notice is provided from April 20 through October 15, and if at least 12-hours advance notice is provided from October 16 through April 19.

Dated: 16 AUG 13

F. M. MIDGETTE

Rear Admiral, U. S. Coast Guard

Commander, Ninth Coast Guard District

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